

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9253 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAFUL ALIAS FULO LALJIBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR KAMAL MEHTA, LD. APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/03/98

ORAL JUDGEMENT

By this application, under Article 226 of the Constitution of India, the petitioner who is the detenu, calls in question the legality and validity of the detention order, passed by the Commissioner of Police, Ahmedabad City on 5th July, 1997, invoking powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act (for short "the Act"); consequent upon which the petitioner came to be arrested, and at present kept under detention.

2. The facts in brief leading the present petitioner to prefer this application may be stated. The Commissioner of Police, had the information that the petitioner was often disturbing the public order by his subversive activities. He, therefore, inquired into the matter and checked different records of the Police Stations under him. While examining the Police records, he could note that about five complaints were lodged with Bapunagar Police Station and Naroda Police Station. All the complaints were about the offences of theft of watches, rough diamonds and other miscellaneous things. The Commissioner of Police having come to know about such complaints made detailed inquiry. He could know that the petitioner was a head-strong person and by his subversive activities, he was disturbing the public order and terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order and spreading pandemonium were going berserk. No one was, therefore, ready to come forward and state against him. After a great persuasion and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses under great tension stated about the petitioner. After the deep inquiry, the Police Commissioner found that to curb the anti-social i.e. subversive and chaotic activities of the petitioner, unspeakable diabolism terrorising the society, and upsetting the public order ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. He, therefore, passed the impugned order. Consequent upon the same, the petitioner came to be arrested and at present, he is in custody.

3. On behalf of the petitioner, challenging the legality and validity of the order of detention. The petitioner has raised several grounds in his petition and to justify this ground, the learned advocate representing the petitioner submitted at length. According to the petitioner, there was no just cause for the Police Commissioner to exercise the privilege and withhold material facts about the witnesses. For want of those facts, the petitioner could not make effective representation. On the other hand, it is the submission of the learned APP that considering the safety of the witnesses i.e. in public interest, the privilege was rightly exercised and the particulars supplied, were sufficient to make effective representation. It may be stated that both the learned advocates representing the parties tapered off their submissions, confining to the

only point namely exercise of privilege under Section 9(2) of the Act. I will not therefore dwell upon the other points but deal with the only point going to the root of the case.

4. Before I proceed, it would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts, but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at anytime by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or

accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference of a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N.Patel Vs. State of Gujarat & Others 35(1) [1994(1)] G.L.R. 761. may be made.

5. In view of such law, the authority passing the detention order has to satisfy the Court that it was having regards to facts and circumstances of the case absolutely necessary in the public interest to withhold the particulars of the witnesses keeping their safety in mind, and for that purpose he had applying his mind taken his own decision, after being fully satisfied. It pertinent to note that the Police Commissioner has not filed affidavit, and therefore, the Court is entitled to interfere everything against the say of the detaining authority. It can be assumed that without any just cause, and without being satisfied about the fear expressed by the witnesses the particulars were suppressed. The petitioner was entitled to know the facts not disclosed. Had the particulars were given, the petitioner could have pointed out that the statements were not reliable. His right to make effective representation is jeopardised. Hence the continued detention must be held to be illegal. The order of detention is therefore required to be quashed.

6. For the aforesaid reasons, this petition is allowed. The order of detention passed on 5th July, 1997, by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule accordingly made absolute.

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